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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

BIRDDOG TECHNOLOGY  
 LIMITED, an Australian company;  
 and BIRDDOG AUSTRALIA PTY,  
 LTD, an Australian company,

Plaintiffs,

v.

2082 TECHNOLOGY, LLC DBA  
 BOLIN TECHNOLOGY, a California  
 limited liability company; BOLIN  
 TECHNOLOGY CO., LTD., a Chinese  
 limited company; HOI “KYLE” LO, an  
 individual; JENNIFER LEE, an  
 individual; and DOES 3 through 25,  
 inclusive,

Defendants.

Case No. 2:23-cv-09416 CAS (AGR<sub>x</sub>)

**PLAINTIFFS BIRDDOG  
 TECHNOLOGY LIMITED’S AND  
 BIRDDOG AUSTRALIA PTY LTD’S  
 OPPOSITION TO DEFENDANTS  
 HOI “KYLE” LO AND 2082  
 TECHNOLOGY, LLC DBA BOLIN  
 TECHNOLOGY’S MOTION TO  
 DISMISS**

*[Filed concurrently with (1) Opposition  
 to Defendants’ Request for Judicial  
 Notice; (2) Plaintiffs’ Request for  
 Judicial Notice; and (3) Declaration of  
 Kevin G. Sullivan ISO Request for  
 Judicial Notice]*

Judge: Hon. Christina A. Snyder  
 Date: February 26, 2024  
 Time: 10:00 a.m.  
 Courtroom: 8D

Complaint Filed: November 7, 2023  
 FAC filed: January 12, 2024

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## 1 I. INTRODUCTION

2 Defendants finding themselves without a valid motion to dismiss sometimes  
3 delay by filing overly broad pleadings motions hoping the Court will ignore the  
4 substance of the complaint and maybe—if they’re lucky—go beyond the pleadings  
5 to resolve disputed issues of *fact* in their favor.

6 Unfortunately, this is exactly what Defendants 2082 Technology LLC dba  
7 Bolin Technology (“Bolin LLC”) and Hoi “Kyle” Lo (“Mr. Lo”), Chief Executive  
8 Officer of Defendants Bolin LLC and its manufacturing arm Bolin Technology Co.  
9 Ltd. (“Bolin Limited”) have chosen to do by way of their Motion to Dismiss (Dkt.  
10 47-1 (“Mot.”)). The Court should reject this invitation and deny the Motion.

11 The vast majority of Bolin LLC’s and Mr. Lo’s warmed-over motion, most of  
12 which is lifted from a prior motion they filed directed at a different pleading (*cf.* Dkt.  
13 27-1), indeed seems directed at a different *case* altogether. As detailed at length in  
14 Plaintiffs BirdDog Technology Limited’s and BirdDog Australia Pty Ltd’s  
15 (“Plaintiffs” or “BirdDog”) 38-page, 131-paragraph First Amended Complaint (Dkt.  
16 34 (“FAC”)), BirdDog was forced to bring this action to remedy and bring an end to  
17 Defendants’ wide-ranging, unlawful and systematic scheme to take control of  
18 BirdDog implicating (1) Defendants’ brazen theft of more than \$3,000,000 in  
19 Plaintiffs’ money pursuant to six key contracts for the supply of cameras, which  
20 Defendants concede have been repudiated (FAC, ¶¶ 4-6; 45-53; 54-67; 68-83);  
21 together with (2) Defendants’ ongoing misappropriation of reams of Plaintiffs’  
22 highly valuable confidential and proprietary information obtained in violation of a  
23 comprehensive nondisclosure agreement and the trade secrets laws of the United  
24 States (FAC, ¶¶ 4-6, 28-33; 34-38; 40-67; 84-103).

25 Paragraph after paragraph of BirdDog’s pleading shows that Bolin LLC, its  
26 manufacturing arm Bolin Limited, Mr. Lo and Jennifer Lee (Chief Operating Officer  
27 of Bolin LLC and Bolin Limited (“Ms. Lee”)) carried out this unlawful scheme by,  
28

1 first, gaining BirdDog’s trust. They represented (i) that they had “over 15 years’  
 2 experience” delivering “the latest in high definition imaging, precision engineered  
 3 controls and performance design” that BirdDog could use in connection with its  
 4 developing and evolving camera manufacturing needs (FAC, ¶¶ 35-36, 38), and (ii)  
 5 executed a comprehensive nondisclosure agreement acknowledging their receipt of  
 6 the “valuable and proprietary information of BirdDog” and requiring Defendants to  
 7 “maintain the confidential nature of” and “not use or disclose or reproduce...for any  
 8 purpose” such information without BirdDog’s consent. FAC, ¶¶ 37, 84-88. Next,  
 9 they induced (i) BirdDog executives to meet them in Southern California for the  
 10 purpose of acquiring BirdDog confidential information and trade secrets (under, as it  
 11 would turn out, false pretenses), and (ii) BirdDog to enter into six key agreements  
 12 and pay Bolin LLC and Mr. Lo, together with Bolin Limited and, over \$3,000,000  
 13 pursuant to those contracts (FAC, ¶¶ 40-53, 68-83). Finally, they pounced: when  
 14 BirdDog rejected Defendants’ hostile takeover overtures, communicated through Mr.  
 15 Lo (FAC, ¶¶ 54-59), Defendants repudiated each of the agreements, stole BirdDog’s  
 16 money, misappropriated BirdDog’s confidential information and trade secrets, and  
 17 utilized BirdDog’s assets to develop, manufacture and ultimately to sell competing  
 18 cameras. FAC, ¶¶ 60-67.

19 Bolin LLC’s and Mr. Lo’s Motion shows that they have no real answer to any  
 20 of this. They ignore these facts and resort to throwing veritable spaghetti at the  
 21 pleadings wall, claiming, falsely, that BirdDog’s pleading is “devoid of the necessary  
 22 facts” and “consist[s] solely of conclusory allegations” while “failing to  
 23 allege...claims consistent” with Rules 8 and 9(b). Mot., at 8:8-10, 16-18. They  
 24 contend that it “improperly attempts to transform a contract case into a tort action”  
 25 (Mot., at 8:25-27), and that no claim whatsoever can be stated against ringleader Mr.  
 26 Lo or Bolin LLC because the Court should disregard the pleading and that Bolin LLC  
 27 is not a party any contract (Mot., at 7:14; *but see* FAC, ¶¶ 4-6; 10-14; 20; 45-53; 54-  
 28



67; 68-83), disregard every other claim and find, as a matter of fact, despite what BirdDog has pleaded, that “[Bolin LLC and Bolin Limited)] are separate legal entities with separate ownership.” (Mot., at 8:2-3)).

None of this is accurate. And Defendants’ factual denials are not susceptible to resolution on a motion to dismiss. This is a pleading motion. And in a pleading motion, Defendants are required to address the pleading that was filed, not one that they wish had been filed. Defendants’ invitation to find in their favor on disputed issues of fact, together with their failure to meaningfully address any of BirdDog’s non-contract claims, is telling. BirdDog has more than met its burden under applicable pleading standards. The Motion should be denied in its entirety.

## **II. FACTUAL BACKGROUND**

Based in Australia, BirdDog is an internationally-renowned vendor of streaming video technology. (FAC ¶ 2.) Bolin LLC and Bolin Limited are each controlled by Chief Executive Officer Mr. Lo and managed by Chief Operating Officer Ms. Lee, with Bolin Limited as the manufacturing arm of Bolin LLC, together holding themselves out to the public and doing business as “Bolin Technology.” (FAC ¶ 3.)

Plaintiffs agreed to engage Bolin LLC and Bolin Limited, signed them to a comprehensive nondisclosure agreement (the “Nondisclosure Agreement”), and started an economic relationship that would eventually result in BirdDog sharing sensitive confidential information and trade secrets with the Bolin Defendants and the Bolin Defendants becoming BirdDog’s primary supplier of camera products. (FAC ¶ 4.)

But Defendants were not content with being Plaintiffs’ primary supplier of camera products. (FAC ¶ 4.) In 2023, it became clear that Bolin LLC, Bolin Limited, Mr. Lo and Ms. Lee had devised a plan to convince BirdDog to entrust them with its funds and highly confidential information, hold and brazenly misuse and

1 misappropriate those funds and highly sensitive information to apply pressure on  
2 BirdDog, create competing cameras and steal BirdDog’s clients and economic  
3 relationships for themselves. (FAC ¶ 4-6; 45-53; 54-67; 68-83.)

4 Part of this scheme were six now-repudiated camera manufacture agreements  
5 (the “Purchase Agreements”). (FAC ¶¶ 46-53; 68-83.) Despite the Bolin Defendants’  
6 repeated representations, they failed to perform their obligations under these six  
7 transactions, which were ultimately repudiated. (FAC ¶ 54.) What is worse, during  
8 this time period, and unbeknownst to Plaintiffs, the Bolin Defendants, Mr. Lo and  
9 Ms. Lee were formalizing their scheme to become BirdDog by misappropriating  
10 BirdDog’s confidential and proprietary information to produce and distribute  
11 competing camera products. (FAC ¶ 63.) On multiple occasions between 2019 and  
12 2022 BirdDog Chief Executive Dan Miall (“Mr. Miall”) met Mr. Lo and Ms. Lee at,  
13 among other locations, their residence in Arcadia, California and at the offices of the  
14 Bolin Defendants in Brea, California. (FAC ¶ 41.) During these meetings, Mr. Lo  
15 and Ms. Lee conducted negotiations for agreements with and otherwise induced Mr.  
16 Miall to provide them and the Bolin Defendants with Plaintiffs’ competitively  
17 sensitive confidential and proprietary information relating to BirdDog’s product  
18 portfolio and product development, including Plaintiffs’ trade secrets. (*Id.*)

19 In 2023, when BirdDog rejected Defendants’ hostile takeover overtures (FAC,  
20 ¶¶ 54-59), Defendants repudiated each of the agreements, stole BirdDog’s money,  
21 misappropriated BirdDog’s confidential information and trade secrets, and utilized  
22 BirdDog’s assets to develop, manufacture and ultimately to sell competing cameras.  
23 (FAC, ¶¶ 60-67). As a result, BirdDog has been unable to fulfill orders and ship  
24 products and is further being damaged through the Bolin Defendants’ unlawful  
25 possession and use of BirdDog’s confidential and proprietary information to compete  
26 with BirdDog in the marketplace. (FAC ¶ 67.)

27 ///

### 1 **III. JUDICIAL STANDARD**

2 A pleading requires no more than a “short and plain statement of the claim  
3 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under Rule  
4 12(b)(6), dismissal is only appropriate when a party “fail[s] to state a claim upon  
5 which relief can be granted.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56  
6 (2007). In other words, the complaint must only “contain sufficient factual  
7 allegations ‘to raise a right to relief above the speculative level’.” *In re TFT-LCD*  
8 *(Flat Panel) Antitrust Litig.*, 599 F.Supp.2d 1179, 1184 (N.D. Cal. 2009).

9 It is black-letter law that “question[s] of fact [are] inappropriate for resolution  
10 on a motion to dismiss.” *Hybrid Financial Ltd. v. Hammitt, Inc.*, 2023 WL 3150092,  
11 at \*1 (C.D. Cal. Mar. 6, 2023) (quoting *Greenwich Ins. Co. v. Rodgers*, 729 F. Supp.  
12 2d 1158, 1164 (C.D. Cal. 2010)). The court must, rather, accept all allegations of  
13 material fact as “true and construed in the light most favorable to the nonmoving  
14 party.” *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 37-38 (9th Cir. 1996); accord  
15 *Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1258 (11th Cir. 2021) (court must  
16 “accept as true the allegations in the pleadings of the non-moving party and draw all  
17 reasonable inferences in that party’s favor”), *rev’d on other grounds*, 22 F.4th 1346  
18 (11th Cir. 2022). A court should “‘assume the [] veracity’ of ‘well pleaded factual  
19 allegations’ and ‘determine whether they plausibly give rise to an entitlement of  
20 relief.’” *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996  
21 (9th Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (internal  
22 citations omitted)).

23 ///

24 ///

25 ///

26 ///

27 ///

1 **IV. ARGUMENT**

2 **A. BirdDog Properly Alleges Its Breach Of Contract Claims**  
 3 **Regarding The Purchase Agreements And Nondisclosure**  
 4 **Agreement.**

5 Bolin LLC first moves to dismiss BirdDog’s claims for breach of contract  
 6 relating to the Purchase Agreements and the Nondisclosure Agreement. But Bolin  
 7 LLC cannot and does not deny that with respect to BirdDog’s claims for breach of  
 8 the Purchase Agreements (FAC, ¶¶ 68-83) and the Nondisclosure Agreement (*id.*, ¶¶  
 9 84-88), BirdDog has met its burden of pleading (1) the existence of each contract;  
 10 (2) BirdDog’s performance or excuse for nonperformance; (3) Bolin LLC’s breach  
 11 and repudiation; and (4) resulting damages. *See Oasis West Realty, LLC v. Goldman*,  
 12 51 Cal. 4th 811, 821 (2011) (elements of breach of contract claim). These allegations  
 13 —“a contract, plaintiff’s performance or excuse for failure to perform, defendant’s  
 14 breach and damage to plaintiff resulting therefrom” —are all that is required. *McKell*  
 15 *v. Washington Mut., Inc.*, 142 Cal. App. 147, 1489 (2006).

16 Bolin LLC nevertheless still seeks to dismiss BirdDog’s claims for breach of  
 17 contract because it wants the Court to find as a matter of *fact* that Bolin LLC was not  
 18 “a party to the contracts at issue (Mot., at 12:14-16) and that it was another entity  
 19 “that entered into the alleged agreements” (*id.*, at 18:13-18) that should not be  
 20 “group[ed]...together.” *Id.* Bolin LLC’s arguments fail.

21 ***First***, putting aside that Bolin LLC does not deny the existence of the contracts  
 22 at issue—it cannot with respect to the Purchase Agreements,<sup>1</sup> as Bolin Limited,  
 23 acting with Mr. Lo, has subsequently and improperly asserted breach of the exact

---

24 <sup>1</sup> Bolin LLC’s very own Motion admits the existence of these contracts. Defendants do not  
 25 seriously argue that these contracts do not exist, they simply try to fool the Court into believing  
 26 the contracts were only between Plaintiffs and Bolin Limited. (Mot. at 10:4-12 [“These  
 27 documents demonstrate that the contracting party was Bolin [Limited], a China-based  
 28 manufacturer, and not [Bolin LLC]. The purchase orders reflecting these contracts were  
 addressed by BirdDog to Bolin [Limited] . . .”]).

1 same contracts in Australia<sup>2</sup>—there is nothing “lumped” about BirdDog’s contract  
 2 claims. BirdDog engaged Bolin LLC: it was a **party** to each of the contracts. For the  
 3 Purchase Agreements, BirdDog alleges that each was “an enforceable oral and  
 4 written contract between BirdDog, on the one hand, and [Bolin LLC and Bolin  
 5 Limited], on the other hand, whereby [Bolin LLC and Bolin Limited] agreed to  
 6 promptly produce and timely deliver” units of cameras in exchange for \$3,000,000  
 7 in BirdDog’s funds, and that each was repudiated by Mr. Lo in his role as CEO of  
 8 both Bolin LLC and Bolin Limited FAC, ¶¶ 62-63, 68-83. And for the  
 9 Nondisclosure Agreement, BirdDog properly alleges that it is an “enforceable written  
 10 contract between and among BirdDog Australia, on the one hand, and Bolin Limited  
 11 on behalf of itself and Bolin LLC, on the other hand, whereby the Bolin Defendants  
 12 agreed to keep confidential the “valuable and proprietary information” of BirdDog,  
 13 and requiring the Bolin Defendants to “maintain the confidential nature of,” “not,  
 14 without the prior consent of BirdDog...disclose any of,” and “not use or disclose or  
 15 reproduce...for any purpose” any of BirdDog’s confidential information except as  
 16 specifically approved by BirdDog. FAC, ¶¶ 37, 85. Bolin LLC is thus not a stranger  
 17 to the relevant contracts, it was a **party**. FAC, ¶¶ 69-74, 85.

18 Bolin LLC’s newfound denial that it had anything to do with the oral and  
 19 written contracts entered into is an interesting **factual** argument contradicted by the  
 20 **factual** record, but that is exactly what is wrong with it: it is certainly **not** the only  
 21 plausible interpretation of each of the contracts—let alone the correct interpretation  
 22 of the contracts—and is certainly **not** a pleading deficiency. *See Catena v. Capitol*  
 23 *Records, Inc.*, 2012 WL 1294270, at \*7 (C.D. Cal. Jul. 11, 2012) (motion to dismiss  
 24

25 <sup>2</sup>Exhibits A and B, Statement of Claims by Bolin Limited filed against BirdDog in the Federal  
 26 Court of Australia, District of Victoria on January 24, 2024 (**nearly two weeks after** BirdDog  
 27 filed its FAC which, *inter alia*, added Bolin Limited as a defendant), is attached to the  
 28 Declaration of Kevin G. Sullivan in Support of Plaintiffs’ Request for Judicial Notice, filed  
 contemporaneously herewith. BirdDog intends to promptly move to stay this improper attempt at  
 forum shopping.

1 denied where, although court could not “definitively decide...the proper  
 2 interpretation of the contract,” it could not “conclude at this stage of the litigation  
 3 that [Defendant]’s interpretation is the only reasonable construction of the  
 4 contract.”); *see also Hall v. FCA US LLC*, 2022 WL 1714291, at \*1 (9th Cir. May  
 5 27, 2022) (error to adopt moving party’s interpretation of contract at motion to  
 6 dismiss stage where interpretation involves question of fact); *Agreement Enf’t, Inc.*  
 7 *v. Pataro*, 2021 WL 8742105, at \*6 (C.D. Cal. Jul. 27, 2021) (denying motion to  
 8 dismiss where contract was “reasonably susceptible” to plaintiff’s interpretation);  
 9 *Madison Heights Kojeszewski v. Infinity Ins. Co.*, 2006 WL 3143445, at \*4 (M.D.  
 10 Pa. Oct. 31, 2006) (denying motion to dismiss where question of parties to contract  
 11 was a factual question).

12 And ***second***, even were that not the case, as a contractual matter, Bolin LLC  
 13 fails to defeat Bolin LLC’s alternative liability as an alter ego of Bolin Limited, Mr.  
 14 Lo and Ms. Lee. FAC, ¶¶ 3-6, 10-12, 13, 20, 35-39, 40-67. Under California law,  
 15 there are two general requirements to establish alter ego liability: “unity of interest  
 16 and ownership” and “that, if the acts are treated as those of the corporation alone, an  
 17 inequitable result will follow.” *Mesler v. Bragg Mgmt. Co.*, 39 Cal. 3d 290, 300  
 18 (1985); *In re Hydroxycut Mktg. and Sales Practices Litig.*, 810 F. Supp. 2d 1100,  
 19 1121 (S. D. Cal. 2011). “[T]here is no litmus to determine when the corporate veil  
 20 will be pierced.” *Mesler*, 39 Cal. 3d at 300. Instead, “the result will depend on the  
 21 circumstances of each particular case.” *Id.*

22 That inquiry is inherently fact-specific. BirdDog alleges that Bolin LLC, Bolin  
 23 Limited and Mr. Lo share a unity of interest and ownership. (FAC ¶ 13.) There is a  
 24 “fiction of separate corporate existence[.]” (*Id.*) Further, “Bolin Limited is the  
 25 manufacturing arm of Bolin LLC, each controlled by Mr. Lo and Ms. Lee, holding  
 26 themselves and the Bolin Defendants out to the public and doing business as ‘Bolin  
 27 Technology.’” (FAC ¶ 3); *Monico v. Liberty Life Assurance Co.*, 06-07021 MJJ, 2007  
 28



1 WL 1140410, at \*5 (N.D. Cal. April 17, 2007) (pleading common ownership, control,  
 2 and integrated operations is sufficient to state an alter ego claim). Bolin Limited  
 3 holds itself out to the public as [Bolin LLC], and vice-versa, and Mr. Lo signs legal  
 4 documents, speaks, makes representations and sends correspondence on behalf of  
 5 both companies jointly and at the same time. (FAC ¶ 13.) Bolin LLC and Bolin  
 6 Limited share business addresses both in the County of Los Angeles and in Shenzhen,  
 7 China. (*Id.*) Bolin LLC and Bolin Limited comingle their assets and share employees  
 8 and executives, as well as attorneys. (*Id.*); *See, e.g., H.C. Duke & Son, LLC v. Prism*  
 9 *Mktg. Corp.*, No. 11-4006, 2012 WL 2792443, at \*5 (C.D. Ill. 2012) (applying  
 10 California law) (pleading intermingled management, failure to observe formalities,  
 11 and unjust result is sufficient to state an alter ego claim). Additionally, “[o]ther  
 12 relevant factors are the use of the same business location, the same lawyers, the  
 13 failure to maintain arms’ length transactions between the entities, representations that  
 14 the parent’s assets will cover the subsidiary’s debts . . . .” *Slottow v. Am. Cas. Co. of*  
 15 *Reading, Pennsylvania*, 10 F.3d 1355, 1360 (9th Cir. 1993); (use of same lawyer a  
 16 “relevant factor[ ]”); *Marr v. Postal Union Life Ins. Co.*, 40 Cal. App. 2d 673, 683,  
 17 105 P.2d 649 (1940) (use of same lawyer “a fact entitled to consideration”).<sup>3</sup> Even  
 18 if Bolin LLC were not a party to the relevant agreements, and as discussed above, it  
 19 is, this is more than enough at the pleading stage to show, as is the case, that Bolin  
 20 LLC is the alter ego of Bolin Limited.

21  
 22  
 23  
 24 <sup>3</sup> Bolin LLC’s reliance on *S.E.C v. Hickey* for the proposition that “[o]wnership is a prerequisite  
 25 to alter ego liability, and not a mere ‘factor’ or guideline[.]” (Mot. at 14:21-23), is entirely  
 26 misplaced. Bolin LLC’s denial of ownership is a disputed **factual** question: *Hickey* did not  
 27 address, let alone purport to resolve, such a question at the motion to dismiss stage. Moreover  
 28 *Hickey* stands for the proposition that such ownership is in regards to an individual’s ownership in  
 a corporation and as such would not apply to Bolin LLC or Bolin Limited. *S.E.C v. Hickey*, 322  
 F.3d 1123, 1128 (9th Cir. 2003). Further, Plaintiffs allege that “a unity of interest and ownership  
 existed between Bolin Limited, Bolin LLC and **Mr. Lo**[.]” (FAC ¶ 13) (emphasis added).

1 Because BirdDog pleads (1) that Bolin LLC is a party to each of the relevant  
 2 agreements, and (2) Bolin LLC is the alter ego of Bolin Limited, BirdDog sufficiently  
 3 alleges its breach of contract claims against Bolin LLC.

4 **B. BirdDog's Tort And Penal Code Section 496 Claims Are Not Barred**  
 5 **By The Economic Loss Rule.**

6 Bolin LLC and Mr. Lo also argue that BirdDog's claims for conversion, money  
 7 had and received, violation of Penal Code section 496, and intentional interference  
 8 with prospective economic advantage are "barred by California's economic loss  
 9 rule." (Mot. at 15:21-17:23.) Not true. Their summary of the economic loss rule is  
 10 misleading, and their argument that it bars those claims is meritless.

11 ***First***, tort claims are permitted in contract cases where "the duty that gives rise  
 12 to tort liability is either completely independent of the contract or arises from conduct  
 13 which is both intentional and intended to harm." *Erlich v. Menezes*, 21 Cal. 4th 543,  
 14 552 (1999). Where "conversion accompanies a breach of contract, the economic loss  
 15 rule does not bar the tort claim." *Bentham v. Bingham Law Group*, 2013 WL  
 16 12186171, at \*12 (S.D. Cal. Nov. 15, 2013) (citing *Robinson Helicopter Co., Inc. v.*  
 17 *Dana Corp.*, 34 Cal. 4th 979, 990 (2004)).

18 ***Second***, the economic loss rule does not apply to Plaintiffs' Penal Code section  
 19 496 and money had and received claims. "Quite simply, the economic loss rule  
 20 'prevents the law of contract and the law of tort from dissolving into one another.'" *Robinson Helicopter Co., Inc.*, 34 Cal. 4th at 988. A Penal Code section 496 claim  
 21 is not a tort claim. It is a statutory one. And a money had and received claim is "an  
 22 action on an implied contract" – not a tort. *Lincoln Nat'l Life Ins. Co. v. McClendon*,  
 23 230 F. Supp. 3d 1180, 1188 (C.D. Cal. 2017).

24 And ***third***, Mr. Lo cannot avail himself of the economic loss rule. Plaintiffs  
 25 did not assert a breach of contract claim against Mr. Lo. (See FAC.) Because  
 26  
 27  
 28



1 Plaintiffs do not seek to recover tort damages for a breach of contract claim against  
 2 Mr. Lo, the economic loss rule does not apply to him.

3 **C. BirdDog Pleads Sufficient Facts To State DTSA And CUTSA**  
 4 **Claims Against Bolin LLC And Mr. Lo.**

5 Bolin LLC and Mr. Lo gloss over BirdDog's trade secret claims. And for good  
 6 reason: there is not much they could say given that BirdDog adequately alleges (1)  
 7 the existence and ownership of its trade secrets (including the Technical Trade  
 8 Secrets and Economic Trade Secrets); (2) misappropriation of its trade secrets; and  
 9 (3) damage caused by Defendants' misappropriation. FAC, ¶¶ 27-33; 89-103; *see*  
 10 *GA Telesis, LLC v. Salesforce.com, Inc.*, 2021 WL 5178803, at \*1 (N.D. Cal. Nov.  
 11 8, 2021) (elements of DTSA and CUTSA claims). No doubt aware of this, Bolin  
 12 LLC and Mr. Lo confine their arguments to claims that contradict the pleadings,  
 13 claiming that BirdDog failed to (1) delineate between any of the Defendants such that  
 14 it is unclear which individual or entity committed which alleged act of  
 15 misappropriation (Mot. at 20:3-5); (2) identify the trade secrets that [Defendants]  
 16 misappropriated as the trade secret was not disclosed with a sufficient degree of  
 17 particularity (20:10-12); and (3) allege that Defendants misappropriated any of  
 18 BirdDog's trade secrets. (Mot. at 21:22-23.) None of this is accurate.

19 **i. Bolin LLC's And Mr. Lo's Defendant Delineation Argument**  
 20 **Contradicts The Pleadings**

21 Seemingly without shame, Bolin LLC and Mr. Lo assert that BirdDog fails to  
 22 distinguish between the Defendants in their FAC as it pertains to BirdDog's trade  
 23 secrets claims. (Mot. at 20:3-5.) As supposed support for this proposition,  
 24 Defendants cite to *Vendavo, Inc. v. Price f(x) AG*, No. 17-cv-06930-RS, 2018 WL  
 25 1456697, at \*4 (N.D. Cal. Mar. 23, 2018), which granted a motion to dismiss a trade  
 26 secrets claim because the complaint failed to distinguish between defendants who  
 27 were a German Corporation and a Delaware Corporation. However, throughout the  
 28

1 FAC, each defendant is described in relation to the DTSA and CUTSA claims. In  
 2 addition to extensive alter ego allegations and allegations that Bolin LLC, Bolin  
 3 Limited, Mr. Lo and Ms. Lee were and are joint tortfeasors (Plaintiffs describe Mr.  
 4 Lo and Ms. Lee (FAC, ¶¶ 16, 20, 34-38, 40-43, 44-67), BirdDog explicitly alleges  
 5 that Bolin LLC and Mr. Lo participated in an unlawful scheme to induce BirdDog to  
 6 provide them with trade secrets (FAC ¶¶ 42, 48, and 51) that they improperly  
 7 acquired, used and disclosed. (FAC ¶¶ 92, and 93.) *Vendavo* is simply inapposite.

8 **ii. BirdDog Sufficiently Identified Its Trade Secrets.**

9 Bolin LLC's and Mr. Lo's belief that BirdDog must provide every detail of every  
 10 trade secret it alleges (and thus destroy its trade secrets) in order to survive a motion  
 11 to dismiss (Mot. at 20:10-21:21) is contrary to law. BirdDog need not "spell out the  
 12 details of the trade secret" in its pleading (*Arthur J. Gallagher & Co. v. Tarantino*,  
 13 498 F. Supp. 3d 1155, 1171 (N.D. Cal. 2020)) and need only claim "something  
 14 beyond general knowledge" sufficient to "put the defendant on notice of what the  
 15 theft is about." *Id.* (sufficient for plaintiff to allege misappropriation of "current  
 16 Gallagher client lists, which include information on the value of the clients' claims  
 17 over the years, client contacts, internal notes regarding particular clients'  
 18 expectations and preferences; (2) internal Gallagher documents and strategies  
 19 regarding client policy structuring, client premium reports, and extensive budget and  
 20 other financial information regarding Gallagher's business; and (3) client retention  
 21 and renewal strategies and information, among other confidential and/or trade secret  
 22 information."). Thus, all BirdDog is required to do is meet a standard of disclosure  
 23 far below what it did here with respect to its Technical and Economic Trade Secrets.  
 24 (FAC ¶¶ 29, 30.) For example, BirdDog provides the following description for one  
 25 of its Technical Trade Secrets:

- 26 • a proprietary hardware-based application allowing for implementation of
- 27 high-bandwidth Network Device Interface (NDI) capabilities facilitating
- 28

1 networked video systems to identify and communicate with each other and  
 2 encode, transmit and receive multiple streams of broadcast-quality, low-  
 3 latency video and audio in real time[.]” (FAC ¶ 29.)

4 Knowing such a description surpasses the pleading requirement, Bolin LLC  
 5 and Mr. Lo instead deceptively edit the above description to simply:

- 6 • “a proprietary hardware-based application[.]” (Mot. at 20:22-23.)

7 Bolin LLC’s and Mr. Lo’s argument that BirdDog’s trade secrets are  
 8 insufficiently identified is contrary to the pleadings and to law. The trade secrets are  
 9 properly identified.

### 10 **iii. BirdDog Sufficiently Alleges Misappropriation.**

11 Lastly, Bolin LLC and Mr. Lo contend that BirdDog fails to allege  
 12 misappropriation. (Mot. at 21:22-23.) This contention borders on frivolous: mere  
 13 sentences later, Defendants admit that on two separate occasions, BirdDog’s CEO  
 14 identified Plaintiffs’ trade secrets incorporated in Bolin Defendants’ products, a clear  
 15 misappropriation. (FAC ¶¶ 64, 65.) It is irrelevant that Bolin LLC and Mr. Lo may  
 16 deny that this information constituted trade secrets or that the items incorporated  
 17 BirdDog’s trade secrets: that is a paradigmatic disputed issue of fact. Moreover,  
 18 Defendants know well, their acquisition of BirdDog’s trade secrets was improper:  
 19 BirdDog describes Mr. Lo and Ms. Lee (acting on behalf of the Bolin Defendants)  
 20 surreptitiously inducing BirdDog’s CEO to provide them with trade secrets (FAC ¶¶  
 21 42, 48, and 51) as part of a scheme to take over BirdDog, as well as Bolin LLC, Bolin  
 22 Limited, Mr. Lo and Ms. Lee operating together in furtherance of a conspiracy to  
 23 improperly acquire, use and disclose Plaintiffs’ trade secrets. (FAC ¶¶ 92, and 93.);  
 24 18 U.S.C. § 1839(6) (“the term ‘improper means’ includes . . . misrepresentation,  
 25 breach or inducement of a breach of a duty to maintain secrecy . . . .); see Cal. Civ.  
 26 Code § 3426.1(a) (“‘Improper means’ includes theft, bribery, misrepresentation,  
 27  
 28

1 breach or inducement of a breach of a duty to maintain secrecy . . . .”).  
 2 Misappropriation has been properly alleged.

3 **D. BirdDog Adequately Pleads Breach Of The Implied Covenant Of**  
 4 **Good Faith And Fair Dealing.**

5 As discussed above, BirdDog sufficiently pleads its claims for breach of the  
 6 Purchase Agreements and pleads additional facts showing that Bolin LLC did one or  
 7 more things that “injur[ed] the right of [BirdDog] to receive benefits under The  
 8 Purchase Agreements],” even if not expressly violating a term of these agreements.  
 9 *Comunale v. Traders & General Ins. Co.*, 50 Cal. 3d 654, 658 (1958); see FAC ¶¶  
 10 104-107. That is all that is required. Bolin LLC’s only argument in response, that  
 11 the claim “is merely a recasting of a breach of contract claims” and is therefore  
 12 “subject to dismissal” because “no special relationship exists between the parties to  
 13 support the claim[]” (Mot. at 22:23-26), is simply incorrect.

14 Bolin LLC “breached the implied covenants of good faith and fair dealing by,  
 15 *inter alia*, withholding performance and holding BirdDog’s funds in order to force  
 16 acquiescence to the Bolin Defendants obtaining control of BirdDog, by knowingly  
 17 and intentionally frustrating and unlawfully interfering with BirdDog’s right to  
 18 receive benefits under these agreements, repudiating their obligations under these  
 19 agreements, refusing to return to BirdDog any of the consideration paid, using the  
 20 consideration paid for purposes other than those associated with production and  
 21 delivery under the agreements, asserting unreasonable demands inconsistent with the  
 22 terms of the agreements to BirdDog’s detriment, and by knowingly, intentionally and  
 23 in bad faith inducing BirdDog to agree to pay millions of dollars to the Bolin  
 24 Defendants when the Bolin Defendants never intended to provide what BirdDog was  
 25 entitled to receive in exchange. (FAC ¶ 106.) It took actions to *become* BirdDog and  
 26 take over BirdDog’s customer relationships. (FAC ¶ 5.)

BirdDog thus properly alleges Bolin LLC's actions "frustrate[d] [BirdDog's] rights to the benefits of the contract' even though such actions did not breach an express covenant of the agreement. *Racine & Laramie, Ltd. v. Dep't of Parks & Recreation*, 11 Cal. App. 4th 1026, 1031–1032 (1992).

**E. BirdDog Adequately Pleads Its Claims For Conversion, Violations Of Penal Code 496, And Money Had And Received.**

Likewise, BirdDog adequately alleges its claims for conversion, violations of Penal Code section 496, and money had and received against Bolin LLC and Mr. Lo. With respect its claim for conversion, BirdDog has shown its "ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Lee v. Hanley*, 61 Cal. 4th 1225, 1240 (2015) (elements of conversion claim); *see* FAC ¶¶ 13, 20, 44-57, 108-111. With respect to its claim for violations of section 496 of the Penal Code, BirdDog has similarly shown that Bolin LLC and Mr. Lo (1) obtained and aided in obtaining by theft property belonging to BirdDog; and (2) concealed or withheld such property and/or aided in concealing or withholding such property from BirdDog, that they knew the property was obtained by theft at the time they received, withheld, concealed, or aided in concealing or withholding the property; and the violations caused actual loss, damage and harm. *Siry Investment, L.P. v. Farkhondehpour*, 13 Cal. 5th 333, 355 (2022); *see* FAC ¶¶ 13, 20, 44-57, 112-116. And with respect to its claim for money had and received, BirdDog adequately pleads that Bolin LLC and Mr. Lo have "in [their] possession money which in equity and good conscience [they] ought to pay over to [BirdDog]." *Rains v. Arnett*, 189 Cal. App. 2d 337, 334 (1961); *Minor v. Baldridge*, 123 Cal. 187, 190 (1898) (money had and received can be used to recovery money obtained by false pretenses); *see* FAC, ¶¶ 13, 20, 44-57, 117-120. A paradigmatic example of such a claim is where, as there, there has been a "total

1 failure of consideration or repudiation.” *Brown v. Grimes*, 192 Cal. App. 4th 265, 28  
2 (2011).

3 Bolin LLC and Mr. Lo do not challenge that more than \$3,000,000 in BirdDog  
4 funds were paid. Instead, they argue they should be let off the hook because they did  
5 not actually receive the funds. (Mot. at 24:11-14 [“The funds were undisputedly [*sic*]  
6 sent only to Bolin [Limited]. Thus, it is implausible that all of these parties jointly  
7 converted the same funds and that all of these parties simultaneously possess those  
8 same funds and/or have jointly used them.”]). But this is not what BirdDog pleads.  
9 Their denial not only contradicts BirdDog’s joint tortfeasor and alter ego allegations  
10 but rests on determination of a factual question that cannot be adjudicated on a motion  
11 to dismiss - *what entity* owns or controls the bank account where the funds were  
12 transmitted and *whether and to what extent* Bolin LLC and Mr. Lo exercise joint  
13 dominion and control over those funds or aided the entities that did. Asking, as they  
14 do, the Court to make that determination on a motion to dismiss is plainly  
15 inappropriate.

16 And *second*, even were that not the case, neither a conversion nor Penal Code  
17 section 496 claim require Defendants to have personally taken money to hold them  
18 liable. To establish a claim for conversion, “[i]t is not necessary that there be a  
19 manual taking of the property; it is only necessary to show an assumption of control  
20 or ownership of the property . . . .” *Shopoff & Cavallo LLP v. Hyon*, 167 Cal. App.  
21 4th 1489, 1507 (2008). Likewise, any “person . . . who conceals . . . withholds, or  
22 aids in concealing . . . or withholding any property from the owner, knowing the  
23 property to be so stolen or obtained” may be held liable for a Penal Code section 496  
24 claim. Cal. Penal Code § 496. Defendants concede that Plaintiffs’ funds were  
25 received. (Mot. at 24:11-12.) This is more than enough to state these claims at the  
26 pleading stage. *See, e.g., Opera Gallery Trading Ltd. v. Golden Trade Fine Art Inc.*,  
27 2015 WL 12912362, at \*2 (C.D. Cal. July 28, 2015) (granting summary judgment on  
28



conversion claim in favor of plaintiffs who “ha[d] the right to possess their respective \$400,000 paid to [defendant] because they never received the paintings” and defendant admitted to “appropriating the funds and . . . [that] it has no intention of returning them”); *Cerra v. Blackstone*, 172 Cal. App. 3d 604, 609 (1985) (the “[u]njustified refusal to turn over possession on demand constitutes conversion even where possession by the withholder was originally obtained lawfully”).

**F. BirdDog Adequately Pleads Its Claim For Intentional Interference With Prospective Economic Advantage**

Bolin LLC and Mr. Lo are also incorrect when they allege, in response to BirdDog’s claim for relief for intentional interference, that the FAC “makes no effort to plead facts separately as to each Defendant . . .” and “other essential facts including, among other things, any specific economic relationships with third parties, the identity of these purported third parties, why the relationship with these parties contained a probability of future economic benefits, how each of the Defendants each knew about these purported relationships, how the alleged failure to deliver cameras disrupted these relationships, how Defendants each specifically and separately interfered, and how BirdDog was allegedly damaged as a result.” (Mot. at 26:11-19.)

This, too, flies in the face of the pleading. BirdDog adequately pleads all elements of this claim, including (1) economic relationships between BirdDog and third parties with the probability of future economic benefits to BirdDog (*e.g.*, FAC, ¶¶ 24-26, 28, 122); (2) Bolin LLC’s and Mr. Lo’s knowledge of those relationships (*e.g.*, FAC ¶¶ 36, 40, 55, 64-67, 123); (3) intentional and independently wrongful acts designed to disrupt those relationships (*e.g.*, FAC ¶¶ 40-53, 124); and (4) actual disruption and economic harm proximately caused by the intentional and independently wrongful acts. (FAC, ¶¶ 40-67, 125). That is all that is required, and is what BirdDog has done. *See Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937,

944 (stating elements). Defendants acted in concert with one another where Bolin Limited acted as the manufacturing arm of Bolin LLC, each “controlled by Chief Executive Officer Mr. Lo and managed by Chief Operating Officer Ms. Lee.” (FAC ¶ 3.) They effectuated their scheme in concert, first attempting to acquire BirdDog, then ultimately “placing a ‘hard sharp stop’ on production of all BirdDog products while unlawfully holding and refusing to return more than \$3,000,000 in BirdDog funds” (FAC ¶ 6.) “Defendants’ apparent and unlawful hope was that their brazen thefts and refusal to deliver BirdDog cameras would damage BirdDog’s reputation by causing BirdDog’s global customer base to question BirdDog’s ability to fulfill their contracts, cease doing business with BirdDog, and – hopefully, in their minds – agree to do business with Defendants.” (FAC ¶ 6.) Defendants implemented this plan in part “in an effort to obtain control of BirdDog and take over its customer relationships - causing BirdDog to lose even more in missed sales and lost profits.” (FAC ¶ 45.) Such customer relationships amount to millions of dollars annually. (FAC ¶ 122.)

BirdDog thus properly alleges this claim.

**G. BirdDog Adequately Pleads Its Claim For Violation Of California Business & Professions Code § 17200, Et Seq. (Tenth Claim for Relief).**

Bolin LLC and Mr. Lo also seek dismissal of BirdDog’s claim for UCL violations, but say only that “[w]here a UCL action is based on contracts not involving either the public in general or individual consumers who are parties to the contract, a corporate plaintiff may not rely on the UCL for the relief it seeks.” (Mot. 27:9-11.)

This, too, contradicts the pleading and the law. To bring a claim under California Business and Professions Code section 17200, a party must “(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e.,



1 economic injury, and (2) show that that economic injury was the result of, i.e., caused  
 2 by, the unfair business practice or false advertising that is the gravamen of the claim.”  
 3 *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 322 (2011). Injury in fact is “an  
 4 invasion of a legally protected interest which is (a) concrete and particularized,  
 5 [citations]; and (b) ‘actual or imminent, not “conjectural” or “hypothetical[.]”’ *Id.* at  
 6 322-23; citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also*,  
 7 *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal.4th  
 8 352, 362 (1999).

9 Here, BirdDog adequately pleads all necessary factors.

10 **First**, BirdDog quite clearly pleads economic injury-in-fact. Among other  
 11 things, the FAC alleges that Defendants are withholding \$3,060,883.10 in Plaintiffs’  
 12 funds. (See e.g., FAC ¶ 6, and 56); *Kwikset Corp.*, 51 Cal. 4th at 323 (finding  
 13 “be[ing] deprived of money or property to which [plaintiff] has a cognizable claim”  
 14 is an economic injury under the UCL); *Hall v. Time Inc.*, 158 Cal. App. 4th 847, 854  
 15 (2008), as modified (Jan. 28, 2008) (same).

16 **Second**, BirdDog’s economic injury was the result of Defendants’ unlawful,  
 17 unfair, or fraudulent business practices. Defendants misstate the circumstances  
 18 surrounding BirdDog’s UCL claim, stating that caselaw has “recognized that a  
 19 ‘dispute between commercial parties over their economic relationship’ does not give  
 20 rise to a UCL claim.” (Mot. 27:12-14); *Linear Tech. Corp. v. Applied Materials,*  
 21 *Inc.*, 152 Cal. App. 4th 115, 135 (2007). But BirdDog *is* a customer of Defendants,  
 22 who are doing business from their headquarters in California. See *Bischma v. Home*  
 23 *Loan Center, Inc.*, 198 Cal. App. 4th 230, 252 (2011) (elements of UCL claim).  
 24 California law simply does not exempt business interactions from the scope of UCL  
 25 liability: the same standard of conduct applies. “[V]irtually any law or regulation—  
 26 federal or state, statutory or common law—can serve as [a] predicate for a [Business  
 27 and Professions Code section] 17200 ‘unlawful’ violation.” *Paulus v. Bob Lynch*  
 28

1 *Ford, Inc.*, 139 Cal. App. 4th 659, 681 (2006). BirdDog’s claims against Defendants  
 2 are appropriate as they are the result of, *inter alia*, Defendants’ violations of Penal  
 3 Code section 496. Claims based on the “unlawful” prong of the UCL “borrow”  
 4 violations of other laws and make those unlawful practices separately actionable  
 5 through the UCL. *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1383, 137  
 6 (2012), as modified on denial of reh’g (Feb. 24, 2012).

7 BirdDog also sufficiently pleads its UCL claim.

8 **H. BirdDog’s Claims Are Not Subject To A Heightened Pleading**  
 9 **Standard.**

10 Finally, knowing that BirdDog sufficiently pleads its claims to satisfy the  
 11 ordinary pleadings standards of Rule 8(a), Defendants argue, or rather simply state  
 12 in conclusory fashion, that the heightened pleading standard applies to Plaintiffs’  
 13 claims.

14 Not so. The mere fact that Defendants’ scheme to take control of BirdDog by  
 15 stealing its money and using its trade secrets is as improper and unlawful as it is does  
 16 not trigger heightened requirements to satisfy standards for claims that are  
 17 “grounded” or “sound” in fraud. Although Rule 9(b)’s heightened pleading standard  
 18 may be required for allegations “grounded in fraud,” a given allegation is not  
 19 grounded in fraud unless it relies “entirely on a unified fraudulent course of conduct.”  
 20 *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009) (citing *Vess v. Ciba-*  
 21 *Geigy Corp. USA*, 317 F.3d 1097, 1105-1106 (9th Cir. 2003)). And even were that  
 22 not the case, paragraph upon paragraph of BirdDog’s FAC more than satisfies the  
 23 requirement of plausibility, showing the who, what, when, where and how of Bolin  
 24 LLC’s and Mr. Lo’s scheme. Even were that not the case, it is well-established that  
 25 Rule 9(b) does not require dismissal when “essential information lies uniquely within  
 26 another party’s control,” as with whatever particulars Bolin LLC and Mr. Lo demand  
 27  
 28

1 at this time. *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1327 (Fed. Cir.  
2 2009).

3 **V. CONCLUSION**

4 For the foregoing reasons, BirdDog respectfully requests that the Court deny  
5 Defendants' Motion in its entirety. Alternatively, to the extent the Court finds any  
6 of the claims are not sufficiently pleaded, BirdDog respectfully requests leave to  
7 amend.

8  
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10  
11 Respectfully submitted,

12 **K&L GATES LLP**

13  
14 Dated: February 5, 2024

By: /s/ Ryan Q. Keech

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 6,844 words, which complies with the word limit of L.R. 11-6.1.

**K&L GATES LLP**

Dated: February 5, 2024

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